

or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts);

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) Use of a procedure specified in 225.7703-1(a) is authorized for an acquisition in support of operations in Afghanistan;

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (*see* Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian

state end product listed in 225.401-70 (*see* 225.7704-2); or

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (*see* 225.7704-2); or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

[67 FR 20694, Apr. 26, 2002, as amended at 67 FR 77939, Dec. 20, 2002; 69 FR 1928, Jan. 13, 2004; 70 FR 2363, Jan. 13, 2005; 70 FR 73155, Dec. 9, 2005; 71 FR 58540, Oct. 4, 2006; 73 FR 53153, Sept. 15, 2008; 75 FR 81917, Dec. 29, 2010; 76 FR 76320, Dec. 7, 2011; 78 FR 59857, Sept. 30, 2013]

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

[71 FR 62566, Oct. 26, 2006]

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a)(1) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with a value greater than the simplified acquisition threshold but less than \$7,864,000.

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,864,000 or more, including acquisitions of commercial items or components.

225.7601

(2) For acquisitions with a value of \$7,864,000 or more, but less than \$10,335,931, including acquisitions of commercial items or components, use the clause with its Alternate I, unless the acquisition is in support of Afghanistan.

(3) If the acquisition is for construction with a value of \$10,335,931 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of \$7,864,000 or more, but less than \$10,335,931, and is in support of operations in Afghanistan, use the clause with its Alternate III.

[75 FR 81918, Dec. 29, 2010, as amended at 76 FR 3536, Jan. 20, 2011; 78 FR 79621, Dec. 31, 2013]

Subpart 225.76—Secondary Arab Boycott of Israel

SOURCE: 71 FR 39006, July 11, 2006, unless otherwise noted.

225.7601 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.7602 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.7603 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

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225.7604 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.7604.

[71 FR 62566, Oct. 26, 2006]

225.7605 Solicitation provision.

Unless an exception at 225.7603 applies or a waiver has been granted in accordance with 225.7604, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items. If the solicitation includes the provision at FAR 52.204–7, do not separately list 252.225–7031 in the solicitation.

[71 FR 39006, July 11, 2006, as amended at 78 FR 37988, June 25, 2013; 78 FR 40043, July 3, 2013]

Subpart 225.77—Acquisitions in Support of Operations in Afghanistan

SOURCE: 73 FR 53153, Sept. 15, 2008, unless otherwise noted.

225.7700 Scope.

This subpart implements—

(a) Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181);

(b) Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), as amended by section 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239);

(c) Section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239); and

(d) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

[78 FR 59857, Sept. 30, 2013]

225.7701 Definitions.

As used in this subpart—

Product from Afghanistan means a product that is mined, produced, or manufactured in Afghanistan.